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**Bankruptcy—Property of the Estate—The Property of the Estate Continues to Exist After Confirmation of the Chapter 13 Plan. Security Bank of Marshalltown v. Neiman, 1 F.3d 687 (8th Cir. 1993).**

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**BANKRUPTCY—PROPERTY OF THE ESTATE—THE PROPERTY OF THE ESTATE CONTINUES TO EXIST AFTER CONFIRMATION OF THE CHAPTER 13 PLAN.** *Security Bank of Marshalltown v. Neiman*, 1 F.3d 687 (8th Cir. 1993).

## I. INTRODUCTION

Chapter 13 of the Bankruptcy Code provides eligible debtors with an alternative to a Chapter 7 bankruptcy liquidation by providing an opportunity for them to restructure their debts and repay their obligations within a specified time period with court supervision and protection.<sup>1</sup> The bankruptcy court, in a Chapter 13 proceeding, will approve a plan which provides for the payment of creditors and which the debtor must successfully complete in order to be rehabilitated.<sup>2</sup> An estate is created when the debtor files a Chapter 13 petition.<sup>3</sup> The estate includes the assets of the debtor at the time of the filing as well as future earnings.<sup>4</sup> All assets of the estate are pledged to satisfy the current creditors.<sup>5</sup> Sometimes, however, debtors have unexpected expenses and find that they must incur additional debts after the plan has been confirmed. How easily a creditor who loans funds to the debtor after confirmation of the Chapter 13 plan can be repaid raises the issue of whether the estate of a Chapter 13 debtor continues to exist after confirmation of the plan by the bankruptcy court. The district and bankruptcy courts have been deeply divided on this issue, giving rise to contrary interpretations of the bankruptcy statutes.<sup>6</sup> The Eighth Circuit Court of Appeals, one of the first circuit courts to address this issue, held in a recent decision that the estate continued to exist after the confirmation of the plan, thereby providing predictability in resolving this conflict.<sup>7</sup>

## II. FACTS AND CASE HISTORY

Robert and Susan Brown (hereinafter the “Browns”) filed a Chapter 13 bankruptcy proceeding in the United States Bankruptcy

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1. 11 U.S.C. §§ 1301-1330 (1988). See generally Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 1978 U.S.C.C.A.N. 5787, 5798; David Hardy, *Conversion from Chapter 13 to Chapter 7 of the Bankruptcy Code: What Constitutes Property of the Post-Conversion Estate*, 1992 B.Y.U. L. REV. 1105, 1111 (1992).

2. 11 U.S.C. §§ 1321, 1322, 1325 (1988). See also Hardy, *supra* note 1, at 1112.

3. 11 U.S.C. §§ 541, 1306 (1988).

4. *Id.*

5. 11 U.S.C. § 1322 (1988). See also Hardy, *supra* note 1, at 1112-13.

6. See Michaela M. White, *The Effects of Chapter 13 Plan Confirmation and Case Conversion on Property*, 26 CREIGHTON L. REV. 785 (1993).

7. *Security Bank of Marshalltown v. Neiman*, 1 F.3d 687 (8th Cir. 1993).

Court for the Southern District of Iowa on December 27, 1982.<sup>8</sup> The debtors were farmers engaged primarily in the raising and selling of hogs.<sup>9</sup> The Chapter 13 plan divided the debt owed to the Security Bank of Marshalltown (hereinafter "Security Bank") into secured and unsecured portions.<sup>10</sup> The Browns satisfied the secured portion of the claim under the plan, and the appellant released its lien on the debtors' assets.<sup>11</sup>

The Browns were allowed to continue to farm during the pendency of the Chapter 13 proceeding.<sup>12</sup> As a result, the Browns incurred additional debts that were primarily for feed and veterinary services for the preservation of their hog herd.<sup>13</sup> Later, after the removal of Security Bank's lien, the Browns sold the hogs and applied the money toward some of their post-petition debts.<sup>14</sup> The Browns then converted to a Chapter 7 bankruptcy proceeding.<sup>15</sup> To recover payments made to the post-petition creditors as preferential transfers under 11 U.S.C. § 547(b), the Chapter 7 trustee brought adversarial proceedings against the creditors.<sup>16</sup> The bankruptcy court held that the trustee could not avoid the transfers based on the exception under 11 U.S.C. § 547(c)(2) and allowed the payments to remain with the post-petition creditors.<sup>17</sup>

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8. *Id.* at 688.

9. *Id.*

10. *Id.* The total debt owed to the bank was \$323,645.52. The secured portion of the claim was set at \$168,840.01 to be paid over 3 years, and the unsecured portion, \$154,805.51, was to be paid at the same rate as other unsecured creditors: \$.445 on the dollar. *Id.*

11. *Id.* The collateral for the secured portion of the debt primarily consisted of the debtors' hog herd. *Id.* The secured creditor objected to the release of the lien but complied with the bankruptcy court order which stated that the release was necessary to protect all unsecured creditors if the debtors converted to a Chapter 7 bankruptcy proceeding. In *Re Brown*, No. 82-1857-C, slip op. 3, 6 (Bankr. S.D. Iowa Oct. 7, 1986).

12. 1 F.3d at 688.

13. *Id.* at 688, 691.

14. *Id.* at 688.

15. *Id.*

16. *Id.* (citing *Neiman v. Brown*, No. 87-0109 (Bankr. S.D. Iowa, filed Nov. 7, 1988)). 11 U.S.C. § 547(b) provides that a trustee may avoid any transfer, except for those provided in subsection (c), of an interest of the debtor in property where it was made: (1) to or for the benefit of a creditor; (2) for an antecedent debt owed; (3) while the debtor was insolvent; (4) within 90 days of the filing of the petition, or within one year if the debtor was an insider; (5) and where the creditor would receive more than if the case was under chapter 7, the transfer had not been made and payment was received pursuant to the provisions of Title 11.

17. *Id.* 11 U.S.C. § 547(c) provides for an exception to the general rule under § 547(b) which allow trustee to avoid transfers under the listed grounds. *See supra* note 16. Section 547(c)(2), which is applicable here, states in pertinent part that a trustee may not avoid a transfer under this section to the extent that such transfer was made in the ordinary course of business. *Id.*

Unable to recover the amounts paid by the Browns to their post-petition creditors, the trustee was then left with \$43,000.00 with which he proposed to pay Chapter 7 and Chapter 13 administrative fees and expenses.<sup>18</sup> The fees and expenses included payments to creditors for expenses incurred in order to preserve the estate under 11 U.S.C. § 503(b)(1)(A).<sup>19</sup> Security Bank objected to the trustee's proposal, arguing that the costs and expenses sought for payments were not needed to preserve the estate because the estate no longer existed after the Chapter 13 plan was approved.<sup>20</sup> The bankruptcy court found that the estate continued to exist beyond confirmation of the Chapter 13 plan.<sup>21</sup> The court allowed the payments to the post-petition creditors as expenses necessary for the preservation of the estate.<sup>22</sup> The appellant appealed to the district court, the district court affirmed the bankruptcy court decision, and an appeal to the Eighth Circuit Court of Appeals ensued.<sup>23</sup>

### III. HISTORICAL DEVELOPMENT

Congress derives its power to enact uniform bankruptcy laws from the United States Constitution, Article 1, Section 8.<sup>24</sup> Early bankruptcy laws favored creditors by ensuring equal division of the

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18. 1 F.3d at 688-89. Administrative expenses have a higher priority than unsecured claims under 11 U.S.C. § 507. The first claims that will be paid in a bankruptcy proceeding are administrative expenses allowed under § 503(b)(1)(A) for "actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case." 11 U.S.C. § 503(b)(1)(A) (1988). Thereafter, the unsecured claims will be satisfied with any remaining assets. 11 U.S.C. § 507 (1988).

19. 1 F.3d at 689. Actual, necessary costs and expenses of preserving the estate will be allowed after notice and a hearing. 11 U.S.C. § 503(b)(1)(A) (1988).

20. 1 F.3d at 689 (citing *Brown*, slip op., at 6). The appellant argued that under a Chapter 13 proceeding, once the plan is confirmed the estate ceases to exist and therefore costs and expenses are not necessary to preserve something which does not exist. The appellant did not argue in the alternative that, assuming the existence of the estate, the expenses were not necessary for the preservation thereof. *Id.* at 689.

21. *Id.*

22. *Id.*

23. *Id.* The case was heard before Circuit Judges McMillian and Beam, and Honorable Howard F. Sachs, Senior United States District Judge for the Western District of Missouri, sitting by designation. *Id.* at 688.

24. U.S. CONST. art. 1, § 8, cl. 4. The clause provides that the Congress shall have the power "[t]o establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States." *Id.*

debtor's property among those to whom he owed money.<sup>25</sup> In an attempt to alleviate some of the harshness of the creditor-favored bankruptcy and to provide a balance between the conflicting interests of debtors and creditors, Congress enacted the Bankruptcy Act of 1898.<sup>26</sup> The Act was subsequently amended by the Chandler Act of 1938 and eventually repealed by the Bankruptcy Reform Act of 1978.<sup>27</sup> The Bankruptcy Reform Act, which is still in effect today, is comprised of eight separate chapters.<sup>28</sup>

Chapter 13 is a very desirable alternative for individuals who are able to make regular payments on their debts because it avoids a liquidation under a Chapter 7 proceeding.<sup>29</sup> There is preference for a Chapter 13 proceeding over the Chapter 7 alternative because the former seems to benefit both debtors and creditors.<sup>30</sup> A Chapter 13 case commences with the filing of a petition under that chapter,<sup>31</sup> and the estate of the debtor is created from the debtor's assets.<sup>32</sup>

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25. Hardy, *supra* note 1, at 1107.

26. Hardy, *supra* note 1, at 1108.

27. Hardy, *supra* note 1, at 1108.

28. 11 U.S.C. §§ 101-1330 (1988). The Bankruptcy Code is comprised of Chapters 1, 3, 5, 7, 9, 11, 12, and 13. Chapter 1 includes general provisions, such as definitions, which are applicable to all the chapters. Chapter 3 provides for case administration also applicable to all the chapters, and Chapter 5 includes provisions regarding the creditors, debtor, and the estate. Chapter 7 is the operative chapter on liquidation. The trustee in a Chapter 7 bankruptcy proceeding will provide for the liquidation of all the debtor's non-exempt estate property and distribute the proceeds to the creditors. Chapter 9 provides for the adjustment of debts of a municipality. Chapter 11 is the reorganization chapter available to businesses, Chapter 12 provides for the adjustment of debts of family farmers who have regular annual income, and Chapter 13 provides for the adjustment of debts of an individual with regular income. See 11 U.S.C. §§ 101, 301, 501, 701, 901, 1101, 1201, 1301 (1988). See also Hardy, *supra* note 1, at 1108-09.

29. 11 U.S.C. § 109(e) (1988). Relief under Chapter 13 can only be sought by individuals who have regular income and who owe on the date of filing non-contingent, liquidated, unsecured debts of less than \$100,000 and non-contingent, liquidated, secured debts of less than \$350,000. *Id.*

30. Robert J. Volpi, *Property of the Bankruptcy Estate after a Conversion from Chapter 13 to Chapter 7: The Need for a Definite Answer*, 68 IND. L.J. 489, 490 (1993). The reason all parties prefer a Chapter 13 option is because both the debtors, creditors, and public interest will benefit from a Chapter 13 reorganization over a Chapter 7 liquidation. *Id.* The debtors can repay their debts while remaining in control and possession of their property, and if the terms of the plan are met, it ensures the debtor a fresh start. *Id.* Creditors will also, in most instances, receive a larger percentage of their claims under the Chapter 13 plan than under a one time liquidation procedure, even though it may take longer to receive payments. *Id.*

31. 11 U.S.C. § 301 (1988). This section provides that a voluntary case is commenced by filing a petition with the bankruptcy court. The commencement of the case will provide for relief afforded under the appropriate chapter. *Id.*

32. 11 U.S.C. § 1306 (1988).

The property that comprises a Chapter 13 estate is defined by 11 U.S.C. § 541 and 11 U.S.C. § 1306. Under these sections, property of the estate not only encompasses the debtor's property at the time of the filing, but also includes property acquired after the commencement of the case.<sup>33</sup> Under Chapter 13, the debtor may remain in possession of the property of the estate unless otherwise provided by the plan.<sup>34</sup> A standing trustee is appointed under a Chapter 13 case to advise and assist the debtor in the performance of the plan.<sup>35</sup> Periodic payments are made by the debtor to the trustee who in turn distributes the funds to the creditors as provided by the Chapter 13 plan.<sup>36</sup>

Chapter 13, available since the Chandler Bankruptcy Act of 1938, has been very difficult to understand, and it has created more inconsistent results among jurisdictions than any other federal statute.<sup>37</sup> The new Chapter 13, created under the Bankruptcy Reform Act of 1978, undertook to solve many of the existing problems and to provide for an effective system for individuals to pay their debts under court protection and supervision.<sup>38</sup> Inconsistent results among jurisdictions, however, continue to exist regarding the interpretation of 11 U.S.C. § 1306 and 11 U.S.C. § 1327.<sup>39</sup>

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33. 11 U.S.C. §§ 541, 1306 (1988). Aside from some exceptions listed under subsections (b) and (c) of § 541, the estate is comprised of virtually all of the debtor's legal or equitable property interests as of the commencement of the case in addition to property acquired after the commencement of the case under § 1306. *Id.*

34. 11 U.S.C. § 1306(b) (1988). Section 1306(b) states that "[e]xcept as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate." *Id.*

35. 11 U.S.C. § 1302 (1988). The duties of the standing trustee are those specified under §§ 704(2)-(9): to appear at any hearing concerning the value of property subject to a lien, confirmation of the plan, or modification of the plan post-confirmation; to dispose of moneys received; to advise and assist the debtor in performance of the plan; and to ensure that the debtor commences making timely payments under the plan. 11 U.S.C. §§ 704(2)-(9) (1988).

36. Chapter 13 requires the filing of a plan under § 1321. The plan will provide for full payment of all claims entitled to priority under § 507 and the plan may provide for payments of unsecured claims which in most instances will be less than their full value. *See* 11 U.S.C. § 1322 (1988). The court must confirm the plan as required under § 1325. Confirmation of the plan will result as long as it complies with the provisions of 11 U.S.C. § 1325 (1988), including the requirement that it be made in good faith.

37. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 1978 U.S.C.C.A.N. 5787, 5798.

38. *Id.* at 5799.

39. White, *supra* note 6, at 785. In her article, Professor White examined the deeply divided status of the property of the estate after the Chapter 13 plan is confirmed as well as the equally divided status of what constitutes property of the estate when the Chapter 13 case is converted to a Chapter 7 case.

The disagreement over whether the property of the estate continues to exist after the Chapter 13 plan is confirmed arises from the courts' attempts to interpret sections 1306 and 1327(b) together.<sup>40</sup> Section 1306 seems to indicate that property of the estate includes all of the debtor's property acquired after commencement of the case but before the case is closed, dismissed, or converted.<sup>41</sup> Section 1327(b), on the other hand, states that unless otherwise provided under the plan, the confirmation of the plan vests all of the property of the estate in the debtor.<sup>42</sup> Professor White<sup>43</sup> classified the property of the estate at issue under three different categories.<sup>44</sup> First, there is the pre-petition property, which is property owned by the debtor at the time the Chapter 13 case is commenced.<sup>45</sup> Second, there is post-petition property, which refers to property acquired by the debtor after the Chapter 13 case is commenced but before confirmation of the plan, and at the same time this term also refers to property acquired after confirmation.<sup>46</sup> Finally, the term post-confirmation property describes all three types of property: property owned before filing, that acquired before confirmation of the plan, and property acquired after confirmation of the plan.<sup>47</sup> Ordinarily, what constitutes property of the estate after confirmation of the Chapter 13 plan will not concern the pre-petition creditors because these creditors cannot take any action against the debtor pursuant to the automatic stay<sup>48</sup> and section 1327(a).<sup>49</sup> The status of the

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40. 11 U.S.C. § 1327(b) (1988). The section provides: "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." *Id.*

41. 11 U.S.C. § 1306 (1988).

42. 11 U.S.C. § 1327(b) (1988).

43. White, *supra* note 6, at 789.

44. White, *supra* note 6, at 789.

45. White, *supra* note 6, at 789.

46. White, *supra* note 6, at 789.

47. White, *supra* note 6, at 789.

48. 11 U.S.C. § 362 (1988). Section 362 provides for an automatic stay which prevents creditors from enforcing claims through the judicial or administrative process against the debtor or against the property of the estate. *Id.* Therefore, it is important to determine whether property remains part of the estate for which the stay would be applicable.

49. 11 U.S.C. § 1327(a) (1988). This section provides that the confirmed plan will bind the debtor and each creditor whether or not the creditor is included in the plan, or has objected, accepted, or rejected the plan. *Id.* See also White, *supra* note 6, at 791. Some pre-petition creditors, however, have successfully argued that if the debtor defaults under the plan, they should be able to take immediate action against the debtor without first obtaining permission from the bankruptcy court. This argument is premised on the assumption that pre-petition claims become post-petition claims upon confirmation of the plan, and if property of the estate ceases

property of the estate after the confirmation of the plan, however, does concern the post-confirmation creditors.<sup>50</sup> Post-confirmation creditors will not favor a determination that property of the estate continues to exist after confirmation of the plan because their ability to collect their claims will then be limited to seeking relief from the automatic stay or from voluntary cooperation from the debtor.<sup>51</sup>

A survey of the cases that address the issue of whether the property of the estate continues to exist beyond confirmation of the plan suggests there are three recurring interpretations which courts have chosen to follow. Prior to *Neiman*, most cases that dealt with this issue examined it from the standpoint of whether the automatic stay afforded under the bankruptcy proceeding applied after the confirmation of the plan.<sup>52</sup>

*Option 1: Property of the estate ceases to exist after confirmation of the plan.*

Courts that follow this alternative interpret the two sections to mean that property of the estate ceases to exist upon confirmation of the Chapter 13 plan. The courts in these cases tend to give more weight to section 1327.<sup>53</sup> One of the most often cited cases that stands for this proposition is *In re Mason*.<sup>54</sup> In that case, after the confirmation of the Chapter 13 plan by the bankruptcy court, the debtor became indebted to a creditor.<sup>55</sup> The creditor obtained a judgment against the debtor and sought to enforce the judgment

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to exist upon confirmation of the plan, the automatic stay is no longer applicable to the creditor. White, *supra* note 6, at 791 (citing *In re Nicholson*, 70 B.R. 398 (Bankr. D. Colo. 1987)). The majority of courts have rejected this argument and hold that the pre-petition creditor must seek relief through the bankruptcy court upon default under the plan, or alternatively move for dismissal or conversion of the case. *Id.* at 792 (citing *Litke v. Trustcorp Mortgage Co.*, 105 B.R. 905, 909-11 (Bankr. N.D. Ind. 1989)).

50. White, *supra* note 6, at 797-98. The automatic stay provision precludes any actions against property of the estate. See 11 U.S.C. § 362 (1988).

51. White, *supra* note 6, at 798. Section 362(d) provides that on request of an interested party and upon a showing of cause, the court may grant relief from the stay by terminating, annulling, modifying, or conditioning the stay. 11 U.S.C. § 362(d) (1988).

52. 1 F.3d at 690.

53. *In re Petruccelli*, 113 B.R. 5 (Bankr. S.D. Cal. 1990). The *Petruccelli* court held that property of the estate ceased to exist post-confirmation of the Chapter 13 plan based on the following analysis. First, the court held that the basic doctrine of statutory construction, which provides that when two statutes are in conflict the more specific statute controls over the general one, applied here. *Id.* at 15. The court found that § 1327(b) was more specific than § 1306 and therefore it was the one to control under these circumstances. *Id.*

54. 45 B.R. 498 (Bankr. D. Or. 1984), *aff'd* *In re Mason*, 51 B.R. 548 (Bankr. D.C. Or. 1985). See also White, *supra* note 6, at 799.

55. 45 B.R. at 499.

by garnishing the debtor's wages.<sup>56</sup> The debtor filed an action to recover the funds, arguing that the creditor had violated the automatic stay.<sup>57</sup> Resolution of the issue of whether the automatic stay was violated depended on the court's interpretation of the status of property of the estate after confirmation of the Chapter 13 plan.<sup>58</sup> The court held that upon confirmation of the Chapter 13 plan, property of the estate reverted in the debtor.<sup>59</sup> This not only meant that possession was in the debtor, but that title vested with the debtor as well.<sup>60</sup> Therefore, the post-confirmation creditors could deal with the debtor as if no bankruptcy case existed.<sup>61</sup> The court stated that this interpretation was the only logical result, because it would otherwise be very difficult for the debtor to obtain post-confirmation credit throughout the pendency of the Chapter 13 bankruptcy case.<sup>62</sup> The court made the distinction between the right to possession and the ownership of the property.<sup>63</sup> The court held that because the Chapter 13 plan in this case required that the debtor not incur any additional debt without the permission of the trustee, this result was not undesirable.<sup>64</sup> If an unexpected need to incur debt arises, the debtor should seek modification of the plan under section 1329.<sup>65</sup> This provided for an equitable result for post-petition creditors, who, unlike pre-petition creditors, have no opportunity to object to the plan.<sup>66</sup>

*Option II: Only property that is not used to fund the Chapter 13 Plan will revert in the debtor and will not be part of the Chapter 13 estate.*

Many courts have chosen to take a middle-of-the-road approach and interpret these statutes to mean that the property used to fund

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56. *Id.* The creditor garnished the debtor's wages and obtained approximately \$626. *Id.*

57. *Id.* See 11 U.S.C. § 362 (1988).

58. 45 B.R. at 500.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* The court further reasoned that unless the order confirming the plan provides otherwise, the debtor's right to control the property is the same as if the bankruptcy had never been filed. *Id.*

63. *Id.* at 500-01. Prior to confirmation, the court stated, the debtor has a right of possession in the property of the estate, and upon confirmation the property vests in the debtor. *Id.*

64. *Id.* at 501.

65. *Id.* 11 U.S.C. § 1329(a) provides that the plan may be modified upon request by the debtor, trustee, or holder of an allowed unsecured claim. 11 U.S.C. § 1329(a) (1988).

66. *In re Mason* 45 B.R. 498, 501 (Bankr. D. Or. 1984), *aff'd In re Mason*, 51 B.R. 548 (Bankr. D.C. Or. 1985).

the Chapter 13 plan will remain property of the estate after confirmation. However, any other property will revert in the debtor and will not be included in the estate.<sup>67</sup> Some courts favor this approach because it provides for the equitable treatment of debtors and creditors.<sup>68</sup> If bankruptcy courts are courts of equity with broad remedial powers, they should not limit themselves to the language of the statutes.<sup>69</sup> Rather, the bankruptcy courts should look at the facts of each case and base their decisions on fairness to both creditors and debtors.<sup>70</sup>

In the *Adams* case, which followed this approach, the debtor's former spouse, after confirmation of the plan, sought to enforce a judgment for past due alimony and child support.<sup>71</sup> The court

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67. *In re Root*, 61 B.R. 984 (Bankr. D. Colo. 1986); *In re Adams*, 12 B.R. 540 (Bankr. D. Utah 1981). The *Root* court stated that if no estate existed after confirmation of the plan, the trustee could not fulfill his duty to administer the estate. 61 B.R. at 985. Therefore, the court concluded that an estate consisting of the debtor's property dedicated to the fulfillment of the plan continued to exist post-confirmation. *Id.* See also *In re Markowicz*, 150 B.R. 461 (Bankr. D. Nev. 1993); *In re Ziegler*, 136 B.R. 497 (Bankr. N.D. Ill. 1992); *In re Schewe*, 94 B.R. 938 (Bankr. W.D. Mich. 1989); *In re Clark*, 71 B.R. 747 (Bankr. E.D. Pa. 1987). The court, in looking at §§ 1306 and 1327, found policy reasons to support the two possible interpretations of what happens to property of the estate after confirmation. 71 B.R. at 749-50. The court stated that if Congress intended for the property of the estate to cease upon confirmation it would simply have said so. *Id.* The relief to the creditor was granted by the court by allowing the debtor, pursuant to § 1329(a), to amend the claim to be included under the plan. *Id.* at 751.

68. Volpi, *supra* note 30, at 509. See also Vicki L. Vaska, Note, *Property of the Estate After Confirmation of a Chapter 13 Repayment Plan: Balancing Competing Interests*, 65 WASH. L. REV. 677, 686 (1990). A Michigan bankruptcy court addressed the competing policy considerations of preserving the rights of creditors while protecting the debtor's rehabilitation. *In re Schewe*, 94 B.R. 938 (Bankr. W.D. Mich. 1989). In this case, the court found in favor of the debtor, stating that the debtor would suffer substantial harm if forced to relocate without the opportunity of contesting the facts and legal issues in the bankruptcy court. *Id.* at 950. The *Schewe* analysis balanced the competing interests of the debtor and the post-confirmation creditor. Vaska, *supra*, at 686-87.

69. Vaska, *supra* note 68, at 688.

70. Vaska, *supra* note 68, at 687-88. Ms. Vaska argues that if the bankruptcy estate is limited to that which existed at the time of the filing of the Chapter 13 estate, then it will harm both pre-petition and post-petition creditors. Pre-petition creditors will bear the risk that the value of the estate will diminish during the course of the plan, which may last as long as five years. In addition, prejudice will result to post-petition creditors by denying them an interest in assets they relied upon to extend credit. *Id.*

71. *In re Adams*, 12 B.R. 540, 541 (Bankr. D. Utah 1981). Alimony and child support debts are non-dischargeable under § 523(a)(5). 11 U.S.C. § 523(a)(5) (1988). Section 523(a)(5) provides that a discharge under 1328(b) does not discharge the

distinguished between property of the debtor and property of the estate after confirmation of the Chapter 13 plan.<sup>72</sup> The court held that in order to find an equitable balance between the debtor's rehabilitation needs and his dependent's need for support, such a distinction was necessary.<sup>73</sup> Property not designated to the fulfillment of the plan would revert in the debtor upon confirmation and remain property of the debtor subject to the reach of the debtor's ex-spouse.<sup>74</sup> The debtor's ex-spouse, in this case, could proceed to collect against the debtor's wages.<sup>75</sup> However, the ex-spouse could only proceed against the wages of the debtor that were in excess of the payments to the trustee under the plan, against any exempt property and not used to fund the plan, and against any other property retained by the debtor that was not necessary to the fulfillment of the plan.<sup>76</sup>

*Option III: The estate continues to exist after confirmation of the Chapter 13 plan.*

In the third line of cases, courts have chosen to follow the alternative that the estate continues to exist after confirmation of the Chapter 13 plan.<sup>77</sup> These courts give more weight to section 1306(a)(1), which provides that the property of the estate consists of all property acquired after the commencement of the case but before the case is closed, dismissed, or converted.<sup>78</sup>

In the *Aneiro* case, the movant sought relief from the stay so that he could proceed to enforce a lease executed by the debtor.<sup>79</sup> The court held that cases which find that the estate ceases to exist

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debtor from any alimony or child support debts. *Id.* After the confirmation of the plan the court may grant a discharge although the debtor has not completed the plan. *Id.* § 1328(b) (1988).

72. 12 B.R. at 541.

73. *Id.* at 542.

74. *Id.* (stating that any property designated to fund the Chapter 13 plan would remain property of the estate, even though exemption of such property was possible). 11 U.S.C. § 1328(b)(8) makes it possible for a debtor to fund the Chapter 13 plan with property which can be exempt. 11 U.S.C. § 1328(b)(8) (1988). For this reason, it becomes necessary in a Chapter 13 case to prohibit a spouse "from proceeding to collect until at least a plan is proposed, and the distinction between what is property of the debtor, by virtue of his claimed exemptions, and what is property of the estate has been clearly drawn." 12 B.R. at 543.

75. 12 B.R. at 543.

76. *Id.* (stating that a better way to handle these types of claims would be to include them in the plan and rely on the trustee to monitor the payments).

77. *In re Price*, 130 B.R. 259 (N.D. Ill. 1991). The district court held that

upon confirmation of the plan mistakenly assume that revesting under section 1327(b) transforms the property of the estate into property of the debtor.<sup>80</sup> The court interpreted the language of section 1306 to mean that confirmation of the plan is irrelevant in determining whether property constitutes property of the estate.<sup>81</sup> In reconciling sections 1306 and 1327, the court stated that mere revesting upon confirmation does not transform the property into property of the debtor.<sup>82</sup> Rather, the revested property continues to be property of the estate and is subject to all the protection afforded by section 362(a).<sup>83</sup>

#### IV. ANALYSIS

The Eighth Circuit Court of Appeals ruled in *Neiman* that the estate continues to exist following confirmation.<sup>84</sup> The court recognized the split of authority regarding this issue and agreed that neither section 1306 nor section 1327 were models of clarity.<sup>85</sup> Security

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property of the estate continues to exist post-confirmation. *Id.* at 269. The court focused on § 1306(a)(1) and held that the debtor's property became property of the estate so long as the debtor acquired it before the case was closed, dismissed, or converted. *Id.* at 270. *See also In re Henry*, 143 B.R. 811 (Bankr. W.D. Pa. 1992); *In re Aneiro*, 72 B.R. 424 (Bankr. S.D. Cal. 1987). The *Henry* court rejected the argument by the creditor that any earnings not used to fund the Chapter 13 plan should not be considered part of the estate and therefore protected by the automatic stay. 143 B.R. at 814. The court stated that the debtor's future earnings were part of the estate and not subject to attachment until the case was either closed or converted. *Id.* This was necessary, the court held, in order to ensure successful reorganization under a Chapter 13 case. *Id.*

78. 11 U.S.C. § 1306(a)(1) (1988).

79. 72 B.R. at 425. Aneiro filed a Chapter 13 petition and the court confirmed the plan. The issue was whether Aneiro could modify a lease without the court's approval. *Id.* at 428. Determination of whether the property of the estate existed post-confirmation was necessary to determine whether court approval of the debtor's need for the attempted modification of the lease was required. *Id.* at 428-29.

80. *Id.* at 428-29. The court also believed that had Congress intended for the confirmation of the plan to "so drastically affect the expansive definition of property of the estate found in § 1306, it knew how to draft such a provision." *Id.* at 429.

81. *Id.* at 429.

82. *Id.* The court stated that the language of § 1306 is clear and found the relevant event not to be the confirmation of the plan, but rather the dismissal, closing, or conversion of the case. *Id.*

83. *Id.* The court also stated that even though the debtor possesses and owns the property of the estate, he cannot do with it as he pleases. *Id.* at 429. The trustee must provide supervision and control over the property that is committed to the fulfillment of the plan pursuant to § 1322(a)(1). *Id.*

84. *Security Bank of Marshalltown v. Neiman*, 1 F.3d at 687, 690 (1993).

85. *Id.* at 689. The court noted the tension between § 1327 and § 1306, which provides that property of the estate encompasses all property acquired after the filing of the Chapter 13 case but before it is closed, dismissed, or converted. On

Bank argued that the court should find that the Chapter 13 estate ceased to exist upon confirmation of the plan.<sup>86</sup> Security Bank claimed that this was the better-reasoned position and that any other interpretation would render section 1327(b) meaningless.<sup>87</sup> Based on this argument, no estate existed, and the post-petition debts would not qualify as administrative expenses entitled to priority.<sup>88</sup> The trustee, conversely, argued that the bankruptcy court properly followed the line of cases which held that the estate continues to exist upon confirmation of the plan.<sup>89</sup> Therefore, as long as the estate continues to exist, administrative expenses incurred to preserve the estate are accorded priority.<sup>90</sup> To hold otherwise, the trustee argued, would create an inequitable result since it would prevent payment to post-petition creditors who extended credit to debtors attempting to keep their businesses going.<sup>91</sup>

The court examined cases which addressed this issue and concluded that most cases dealt with whether the automatic stay remained in effect following confirmation.<sup>92</sup> The Eighth Circuit Court of Appeals distinguished *In re Adams* from the present case.<sup>93</sup> In *Adams*, post-confirmation assets consisted of property of the estate if they were dedicated to fulfillment of the plan or as property of the debtor if not dedicated to fulfillment of the plan.<sup>94</sup> The issue in the case was which assets were included in the estate, and which assets were, therefore, protected by the stay.<sup>95</sup> Here, the Eighth Circuit Court of Appeals stated that the issue involved in this case is simply whether the estate continues to exist post-confirmation.<sup>96</sup>

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the other hand, § 1327 provides for the vesting of all the property of the estate upon confirmation of the plan. The court found that different interpretations of these two sections yield the different results found among the jurisdictions. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 689-90.

92. *Id.* at 690 (citing *In re Clark*, 71 B.R. 747 (Bankr. E.D. Pa. 1987); *In re Adams*, 12 B.R. 540 (Bankr. D. Utah 1981)).

93. *Id.* at 690.

94. *Id.*

95. *Id.*

96. *Id.* The court discussed the fact that this issue was once presented to the Eighth Circuit Court of Appeals in another case, *Laughlin v. IRS*, 912 F.2d 197 (8th Cir. 1990), *cert. denied*, 498 U.S. 1120 (1991), but the court resolved that case without having to address this particular issue. However, the dissenter in that case, Judge Magill, addressed the issue, finding the cases which follow the position that the estate continues to exist post-confirmation to be more persuasive. 912 F.2d at 202.

The court found the line of cases which hold that the estate continues to exist after confirmation of the plan more persuasive.<sup>97</sup> The court reasoned that even if 11 U.S.C. § 1327 has the effect of vesting property of the estate in the debtor upon confirmation, it does not necessarily mean the estate ceases to exist.<sup>98</sup> The court also indicated that even though the estate holds no property, it may continue to exist as a legal entity post-confirmation.<sup>99</sup> The court sustained the view that the estate does not cease to exist after confirmation through the application of several other bankruptcy statutes.<sup>100</sup> The trustee must supervise and control monies and property of the estate committed to the plan pursuant to 11 U.S.C. § 1322(a)(1).<sup>101</sup> Pursuant to 11 U.S.C. § 345, the trustee may invest or deposit money of the estate.<sup>102</sup> The trustee is also authorized to stop payment on unpaid checks ninety days after final distribution, paying the remainder of the property of the estate into the court pursuant to 11 U.S.C. § 347(a).<sup>103</sup> A final report and the filing of a final account regarding the administration of the estate must be made by the trustee as required under 11 U.S.C. § 704(9).<sup>104</sup> Finally, under 11 U.S.C. § 349(b)(3), unless otherwise provided by court order, dismissal of the Chapter 13 case "reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case."<sup>105</sup> The court indicated that all of these sections support the position that the estate continues to exist following confirmation of the Chapter 13 plan.<sup>106</sup>

The Eighth Circuit Court of Appeals also agreed that if Congress had intended that the property of the estate cease to exist upon confirmation, it would have drafted such a provision.<sup>107</sup> The court

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97. 1 F.3d at 690.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* Section 1322(a)(1) provides that the plan must "provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan." 11 U.S.C. § 1322(a)(1) (1988).

102. 1 F.3d at 690.

103. *Id.* at 690-91.

104. *Id.* at 691. Section 704(9) is made applicable to a Chapter 13 case through 11 U.S.C. § 1302(b)(1). *Id.*

105. *Id.* (quoting 11 U.S.C. § 349(b)(3) (1988)).

106. *Id.* at 691. The court then quoted from the *Root* case, which provided that "[i]f there is no existing estate upon confirmation, then what does the Chapter 13 Trustee administer? If there is no estate over which the Chapter 13 Trustee has control, then that Trustee is nothing more than an officious intermeddler. . . ." *Id.* (quoting *In re Root*, 61 B.R. 984, 985 (Bankr. D. Colo. 1986)).

107. *Id.* at 691 (citing *In re Aneiro*, 72 B.R. 424, 428-29 (Bankr. S.D. Cal. 1987)).

sustained this position by arguing that Congress did intend such a result under a Chapter 11 bankruptcy proceeding.<sup>108</sup> Under 11 U.S.C. § 1141(b), confirmation of the plan vests all property of the estate in the debtor;<sup>109</sup> however, confirmation also acts as a discharge of the case, thereby ending the automatic stay provision.<sup>110</sup> The Eighth Circuit Court of Appeals decided that this was not the effect provided for under confirmation of the Chapter 13 plan.<sup>111</sup>

The Eighth Circuit Court of Appeals, therefore, held that the estate continues to exist after confirmation of the Chapter 13 plan.<sup>112</sup> Since the post-petition debts in this case were for feed and veterinary services incurred to preserve the Browns' hog herd, they constituted administrative expenses incurred in the ordinary course of business and were entitled to priority under 11 U.S.C. § 507(a)(1).<sup>113</sup>

## V. SIGNIFICANCE

The decision of the Eighth Circuit Court of Appeals in favor of the estate's continuing existence after confirmation of the Chapter 13 plan is significant for several reasons. First, the decision eliminated speculation over the interpretation of this issue and provided uniformity among jurisdictions within the circuit that will restrict creative debtors and creditors from forum shopping for a more advantageous result.<sup>114</sup> Because the goal behind enacting bankruptcy laws is uniformity, non-uniform applications of bankruptcy statutes defy the constitutional mandate.<sup>115</sup>

The continued existence of the property of the estate post-confirmation also means that post-petition creditors may take priority over other unsecured creditors in the payment of debts. In other words, as exemplified by the *Neiman* case, because the post-petition creditors' claims were considered to be administrative expenses incurred to preserve the estate, the claims had priority over Security Bank's claim on the unsecured debt.<sup>116</sup>

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108. *Id.* at 691.

109. 11 U.S.C. § 1141(b) (1988).

110. 1 F.3d at 691. In addition, 11 U.S.C. § 1141(d)(1) (1988), provides that except as otherwise provided in the plan, the confirmation of the plan discharges the debtor from debts which arose before the confirmation date.

111. 1 F.3d at 691.

112. *Id.*

113. *Id.*

114. Hardy, *supra* note 1, at 1105.

115. Hardy, *supra* note 1, at 1105.

116. *See* 1 F.3d at 691. Although the post-petition claim in this case took priority over the unsecured claim of Security Bank, it only did so because it was considered

Resolving this issue in favor of the continuance of the estate post-confirmation may also provide for conflicting results. Although post-petition creditors may be willing to lend funds to the debtors post-confirmation, they will probably only do so to the extent these funds are for preserving the estate and, therefore, considered administrative expenses. It is unlikely that creditors will otherwise be willing to provide credit post-confirmation of a Chapter 13 plan however, since all of the protection afforded under the title, namely the automatic stay, will still be available to the debtor post-confirmation. This may impair the debtor's ability to meet the plan requirements and may eventually lead to a conversion of the case.<sup>117</sup>

This decision may be significant in one other respect. The significance arises when a Chapter 13 case is converted into a Chapter 7 case.<sup>118</sup> The Eighth Circuit Court of Appeals adopted the date of conversion rule to establish what property is included under the Chapter 7 estate upon conversion.<sup>119</sup> Under this rule, the Chapter 7 estate constitutes all of the debtor's interest in property at the time of conversion.<sup>120</sup> This rule is in conflict with the position that the Chapter 13 estate continues to exist post-confirmation because, in the event of conversion, this Chapter 13 estate would not be included in the Chapter 7 estate.<sup>121</sup> These two conflicting positions can only be reconciled by providing that the debtor has an interest in the Chapter 13 estate on the date of conversion.<sup>122</sup>

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to be a claim for administrative expenses. The administrative expenses were incurred to preserve the estate and, therefore, took priority pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(1). Unless a claim that arises post-confirmation qualifies as an administrative expense, it will become, along with a pre-petition claim, a dischargeable obligation in the event the case is converted. White, *supra* note 6, at 798.

117. Vaska, *supra* note 68, at 684.

118. White, *supra* note 6, at 798. The article provides an excellent discussion of the problems in determining the scope of property of the estate in connection with the conversion of a Chapter 13 case into a Chapter 7 case.

119. White, *supra* note 6, at 821 (citing *In re Lindberg*, 735 F.2d 1087, 1090-91 (8th Cir. 1984), *cert. denied*, 469 U.S. 1073 (1984); *Resendez v. Lindquist*, 691 F.2d 397, 400 (8th Cir. 1982)).

120. White, *supra* note 6, at 834. The estate, upon conversion to a Chapter 7 proceeding, will include any property the debtor has an interest in at the time the conversion takes place. The assets under the Chapter 7 estate will then be available for distribution to pre-petition and post-petition creditors. White, *supra* note 6, at 822.

121. White, *supra* note 6, at 835. The date of conversion approach to estate property under a Chapter 7 proceeding includes all of the property in which the debtor has an interest. If the confirmation of the Chapter 13 plan, prior to conversion, does not affect the property of the Chapter 13 estate, the debtor cannot be said to have an interest in such property.

122. White, *supra* note 6, at 835. If the debtor's interest at the date of conversion

## VI. CONCLUSION

Although the Eighth Circuit Court of Appeals has resolved the issue of whether the estate continues to exist post-confirmation, there is still a wide split of authority regarding this issue among other jurisdictions, and therefore, results are still unpredictable in other courts.<sup>123</sup> Whether other courts will choose to follow the Eighth Circuit Court of Appeals' decision or one of the other two alternatives will determine whether the application of the bankruptcy statutes provides more or less uniformity among the jurisdictions. This may lead to reform by Congress or a final decision by the Supreme Court. The application of the *Neiman* decision in the future will also reveal its full impact and significance under the Bankruptcy Code.

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does not include the property of the estate under the Chapter 13 proceeding, such property may not be included in the Chapter 7 estate and will not be available for distribution to creditors.

123. The Eighth Circuit Court of Appeals is the only circuit court that has considered this issue. Until *Neiman*, the split of authority existed primarily among district and bankruptcy courts.